IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

OP.No. 19583 of 2001(S)
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OA.421/1998 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. VIKRAM SARABHAI SPACE CENTRE (VSSC)
INDIAN SPACE RESEARCH ORGANISATION
TRIVANDRUM 695022 REPRESENTED BY
HEAD, PERSONAL & GENERAL ADMINISTRATION
2. UNION OF INDIA REPRESENTED BY SECRETARY,
DEPARTMENT OF SPACE, NEW BEL ROAD
BANGALORE 560094

BY ADV. SRI.P.PARAMESWARAN NAIR,
ASST.SOLICITOR GENERAL

RESPONDENTS:
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1. K.S. SADASIVAN ACHARY, TRADESMAN E
SASMD/IISU VIKRAM SARABHAI SPACE CENTRE,
TRIVANDRUM
2. CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH REPRESENTED BY ITS
REGISTRAR

BY ADV. SRI.G.SASIDHARAN CHEMPAZHANTHIYIL
SRI.S.VISHNU
SRI.MANOJ RAMASWAMY
KUM.CEEBA MATHEWS

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 16/07/2007, THE COURT ON 31/07/2007
DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

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O.P. No 19583 of 2001

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Dated: 31st July 2007

JUDGMENT

Radhakrishnan, J.

This original petition has been preferred by the Union of India and Vikram Sarabhai Space Centre (in short VSSC) aggrieved by the order of the Central Administrative Tribunal, Ernakulam Bench in O.A. No 421 of 1998.

2. First respondent herein preferred the above mentioned application seeking a declaration that he is entitled to have his pay fixed under FR 22(1)(a)(2) on joining VSSC and also for a direction to the respondents to pass orders on Annexure A7 representation. Annexure A8 and and A9 were also challenged before the Tribunal. First respondent while holding the post of Tradesman D in the Bhabha Atomic Research Centre (for short "BARC") in the scale of Rs 1320-2040 applied for appointment to VSSC in the post of Tradesman B in the scale of Rs 1150-1500. His application was forwarded by the BARC to the VSSC. He was selected and

appointed as Tradesman B under VSSC and he joined duty on 21.12.1992 and his pay was fixed in the minimum of the scale of Rs 1150-1500. First respondent raised a contention that he is entitled to have his pay drawn in BARC protected and his pay regulated in accordance with the provisions contained in FR 22(1)(a)(2) and the petitioners refused to do so and fixed his pay at the minimum of the scale of 1150-1500.

3. The question that is posed for consideration is whether the first respondent who was holding the post of Tradesman D on an officiating basis and Tradesman C on a substantive basis drawing basic pay of Rs 1470 in BARC is entitled to have his pay regulated and fixed in accordance with the provisions contained in FR 22(1)(a)(2). We may extract the said provision for easy reference.

> F.R 22. (1) The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows:-
> (a)(1) xx xx xx xx
>
> (2) When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis.

> Provided that where the minimum pay of the time scale of the new post is higher than his pay in respect of the post held by him regularly, he shall draw the minimum as the initial pay:
>
> Provided further in a case where pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time-scale of the old post, in cases where pay is fixed at the higher stage, he shall get his next increment on completion of the period when an increment is earned in the time-scale of the new post.

We are of the view that the benefit of the above mentioned provision is available only if the first respondent is working in the same department. The Tribunal in our view has committed an error in holding that both BARC and VSSC come under the Department of Space. In fact BARC and ISRO are two independent organizations falling under the Department of Atomic Energy and Department of Space respectively. First respondent was holding a post with higher pay scale and was drawing higher pay in BARC. Duties and responsibilities of the post of Tradesman in BARC are not identical to that of Tradesman B in VSSC. Selection of the first respondent was to a lower post involving duties and responsibilities of lesser importance. The appointment was also accepted by him voluntarily so as to remain in his home town. Therefore his claim for protection

of pay which was drawn by him for discharging higher duties and responsibilities in BARC should not have been granted. Further the appointment order itself would indicate initial pay and the scale of pay offered are based on an evaluation of his qualification, experience and performance in the interview and no claim for higher pay or higher grade or premature protection would be entertained. Having accepted the offer of fresh appointment in a different organization first respondent cannot claim protection of his pay drawn by him in another department.

4. We may in this connection refer to the decision of the apex court in Comptroller and Auditor General of India v. Farid Sattar (AIR 2000 S.C 1557). The apex court interpreting Rule 22(1)(a)(3) of the Fundamental Rules held that unilateral transfer after seeking reversion to the lower post as direct recruit is not contemplated under the Fundamental Rules. What is contemplated is the transfer on written request under Fundamental Rule 15. But if such a transfer is not contemplated under the Fundamental Rule, it is not necessarily to be governed by the Fundamental Rule, but by the terms and conditions of such unilateral transfer. Reference may also be made to the decision of the apex court in Union of India and others v. Smt

Sujatha Vedachalam and another (AIR 2000 S.C. 2709) wherein it was held that once an employee accepts transfer he should technically resign from the post which he was holding and should join as direct recruit to lower post on transfer and the employee accepting the conditions of transfer is entitled to pay scale applicable to lower post.

5. In view of the above mentioned circumstances, we are of the view that the Tribunal has committed an error in declaring that the first respondent is entitled to have his pay fixed under FR 22(1)(a)(2) on joining the service under the VSSC. The writ petition is therefore allowed and the order of the Tribunal would stand set aside.

Sd/-
K.S. RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINIC
Judge

31/07/2007
en/

[true copy]

APPENDIX

Petitioners' exhibits:

Ext.P1 - True copy of letter S/4832/PIS/Est III dated 28.2.1990 from Baba Atomic Research Centre (BARC) to A.O VSSC

Ext.P2 - True copy of forwarding letter No S/4832/PIS/Est.III/960 dated 9.3.1990 from BARC to VSSC

Ext P3 - True copy of interview letter No VSSC/HMT/9.0/890/EE 702 dt 7.1.1991 from VSSC to first respondent

Ext.P4 - True copy of offer of appointent dt 18.11.1992 issued to first respondent

Ext.P5 - True copy of Memorandum No VSSC/Est/F.1(13) dt 18.3.1994 from VSSC to first respondent

Ext.P6 - True copy of Memorandum No VSSC/Est/F/1(14) dt 1.8.1996 from VSSC to first respondent

Ext.P7 - True copy of Memorandum No VSSC/Est/F/1(14) dt 1.8.1996 from VSSC to first respondent

Ext.P7 - True copy of Memorandum No VSSC/Est.F/1(14) dt 11.4.1997 from VSSC to first respondent

Ext.P8 - True copy of impugned order of CAT in OA 421/1998 dt 7.2.2001

Ext.P9 - Copy of the reply statement dated 14.07.1998 filed by the petitioners in OA No 421/1998

Ext.P10 - Copy of the Additional Reply statement dated 14.12.2000 filed by the petitioners in OA 421/1998.

First respondent's exhibits:

Ext.R1(a)- True copy of O.A No 421/`1998 dt 4.3.1998 filed before the CAT,Ernakulam Bench

Ext.R1(b) - True copy of rejoinder dt 28.11.2000 filed before CAT Ernakulam Bench

Ext R1(c) - True copy of order VSSC/EST/F/Misc 2000 dated 20.11.2000 issued by the first petitioner

Ext R1(d) - True copy of order in O.A 470/2001 dated 29.1.2003 of the CAT, Ernakulam Bench

Ext.R1(e) - True copy of order No VSSC/EST/N/LVIG/23110 dated 24.4.2003 issued by the first petitioner

[true copy]